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June 30, 1994

RE: CC Docket 94-1

The Honorable Reed E. Hundt
Chairman, Federal Communications Commission
1919 M St. N.W., Suite 814
Washington, D.C. 20554

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Dear Chairman Hundt:

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The American Legislative Exchanger Council (ALEC), the nation's largest bipartisan membership association of state legislators, is committed to advancing public policies which would open the telecommunications market to increased competition. Accordingly, ALEC is very interested in the FCC's current proceeding which evaluates the need for price cap reform as relates to the regulation of local exchange carriers (LECs).

Relative thereto, the ALEC Task Force on Telecommunications has adopted the following positions. I urge you to consider these positions in your review of the current price cap plan:

1. *Rate of Return Regulation is Inappropriate in Today's Telecommunications Environment:* As early as 1990, ALEC recognized the necessity of addressing the changing telecommunications market with a new regulatory approach that would stimulate, rather than inhibit, the ability of telecommunications companies to meet competitive challenges. Where regulation is necessary, it should focus on price and quality of services instead of profit levels. Price regulation encourages infrastructure investment and expedites the delivery of new innovative services. Therefore, ALEC urges the FCC to adopt a true, price regulation plan for the LECs and eliminate the link between prices and earnings that remains due to the sharing mechanism.

2. *The Regulatory Process Needs Streamlining:* In an increasingly competitive environment, local exchange carriers need an acceptable way, short of lengthy filings, hearings, etc. to introduce new services and change prices on existing services. Therefore, ALEC urges the FCC to relax its rules on the introduction of new services to expedite the delivery of new services to customers. Additionally, ALEC urges the FCC to rely on market forces to determine price levels and price changes where there is a competitive environment.

Public policy should continue its commitment to providing universal service at reasonable rates. At the same time, public policy should seek alternative regulatory mechanisms to ensure that the public telecommunications network fosters future economic and social development.

I have attached, as additional information, an ALEC State Factor "*The Dawning of the Era of Enlightened Telecommunications Regulation*" and an ALEC Model State Bill "*Regulatory Reform*".

Respectfully,

Samuel A. Brunelli
Executive Director

No. of Copies rec'd 2 copies
List A B C D E

Enclosures

cc: ~~Cotton~~, Quello, Barrett, Ness, & Chong.

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The State Factor

Volume 16, Number 3.

February, 1990

THE DAWNING OF THE ERA OF ENLIGHTENED TELECOMMUNICATIONS REGULATION

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The United States' basic telephone service has set the standard for the rest of the world. However, a multi-featured (voice, data and television services), integrated public telecommunications network will be a requirement to support the vast array of possible new Information Age services to all Americans. Many of these services are already available to large American businesses and have already begun to be distributed in foreign public networks (e.g., France, Japan, Germany, etc.). Instant and easy access to information is becoming a key to increasing our national productivity in manufacturing and services industries. A state-of-the-art telecommunications system will ensure that consumers and small businesses have access to the basic and enhanced services that are possible in today's and tomorrow's communications and information arenas.

The regulatory process must stimulate, rather than inhibit, all telecommunications companies' abilities to meet the competitive challenges facing this nation. The stimuli required include encouraging the investment to develop and deploy new technologies and services, to enhance existing technologies and services, and to accelerate efficient network operations management.

Given the changing market and technology dimensions, the appropriate question becomes "What should be the role of regulation of the telecommunications industry?" Regulation in a competitive industry, such as the current telecommunications industry, must be kept to the absolute minimum. Regulation should be confined only to those products and services which have retained their sole franchise characteristics and which have been unable to develop sufficient competitive marketplace forces to act as the "invisible regulatory." Regulation must change to keep pace with the evolving communications and information marketplaces. Regulation must encourage the introduction of new products and services in order to advance the goals of economic, technological, and social development. When necessary, regulation must be formulated to provide adequate consumer protective safeguards and assure the continuation of universal goals. Regulation must encourage economic efficiencies in the allocation of resources, improvements in productivity, and implementation of technological advance.

OVERVIEW

Telecommunications is one of the most vital infrastructure of a modern industrial nation. A first rate public telecommunications network has long been recognized as an essential ingredient not only for a nation's commercial success and economic development but also for the social well-being of its individual citizens.

For over twenty years, the American telecommunications industry has become an increasingly competitive arena. As a result of this increasing competition, the telecommunications industry went through one of the largest restructuring in U.S. history, namely, the breakup of the Bell System. Another effect of competition has been the accelerated introduction and deployment of new technologies which today, for large corporations, support new telecommunications and new information services and products. For the most part, these new technologies, telecommunications services and information services have been developed and deployed within private, relatively expensive, "stand-alone" networks by large corporations that absolutely require these services for the performance of their daily business operations. The coupling of telecommunications services with information services has, for big business, become an essential component to the United States' productivity and competitiveness.

The vast majority of small businesses and, of course, residences do not currently enjoy access to, or even know of, the wealth of new telecommunications/information services and products that could be made available to them over a public telecommunications network.

If America is to keep pace with other nations in fully developing all of its business potential and the resources of all of its citizens, then public network capabilities beyond just voice services must be made more accessible on a much broader and less expensive basis. It may be by this evolution of the public telecommunications network that the future "wealth" of the nation will be determined, both in our business climate and the continued high quality of the lives for our citizens.

Public policymakers, particularly state legislators and regulators, have a major role in formulating today's policies and priorities which will encourage and deliver tomorrow's telecommunications/information services and products. All segments of the current telecommunications industry, from the largest inter exchange companies to the smallest local exchange companies, must be encouraged to develop and widely deploy, through private financing, ownership and operation, those public networks and infrastructures which can deliver the promises of telecommunications services and products. These companies must be encouraged to:

- Build a national public telecommunications system that will maintain the United States' reputation as the world's premier provider of telecommunications/information services and products.

- Deliver to the American public access to a high-tech, feature-rich network with a competitive array of communications and information products and services, offered at reasonable prices.
- Protect America's current commercial vitality while creating new jobs and new opportunities for American industries at home and abroad.

There are several means by which our nation and states can encourage the providers of public telecommunications services to expeditiously develop new services. One of the most important means is to assure that appropriate forms and amounts of regulation, consistent with today's telecommunications industry structure and market forces, are being imposed upon those companies which provide telecommunications services to the public.

This is the theme for this paper, that as state and federal regulatory schemes become "out of touch" with the realities of technological capabilities or the developments of domestic international market forces, then individual states and possibly the nation may suffer from a stunted, disjointed public telecommunications infrastructure.

RATE OF RETURN REGULATION IS INAPPROPRIATE IN TODAY'S TELECOMMUNICATIONS ENVIRONMENT

For over fifty years, regulation was imposed upon those companies that provided telecommunications services to the public in order to achieve the following public interest goals:

- promote universal service,
- prevent uneconomical duplication of facilities through granting exclusive franchises and substituting regulation for competition, and,
- monitor and control total profit levels rates and quality of services of exclusive franchises through a regulatory mechanism known as rate base, rate of return regulation.

However, the capacity of this regulatory mechanism to achieve, or maintain, any of these goals has been eroded by the significant changes in the telecommunications environment.

Rate of return regulation was developed for, all works well in, an exclusive franchise environment. When there was one government regulated provider of services, there was in turn control of rates, costs and introduction of new technologies. The frailties of this form of regulation in today's competitive environment quickly become apparent as:

- the exclusive franchise is circumvented or actually done away with,

- the sole provider faces competition and loses control over the types of services offered, the costs of those services and ultimately the rates, thus the customer base is reduced and revenues are lost,
- and the pace of technology introduction quickens but the regulated company is unable to invest in this technology.

To the extent that any of these conditions occur, it eliminates the continued need, or use, of rate base/rate of return regulation. In fact, the continued use of this form of regulation may jeopardize the natural development of the entire industry in general, and severely inhibit or damage a heavily regulated company in particular.

Some of the "damage" that rate base/rate of return regulation in a competitive environment can cause upon the public, the industry and the regulated companies are:

- rate of return regulation imposes significant direct and indirect costs on the public and the regulated companies cost which necessarily must be borne by the rate payers;
- as rate of return regulation prevents the industry from having the flexibility and incentive to compete, key customers are lost to unregulated competitors. The remaining customers, primarily residence and small businesses, must then pay more to offset the revenue;
- rate of return regulation slows the delivery of new products and services to the marketplace;
- rate of return regulation fails to provide proper incentives to the regulated companies for expanding their network capabilities and investing in new technologies;
- rate of return's regulatory restrictions for new technology and investments deprives the communities of having this state-of-the-art telecommunication infrastructure essential to economic development;
- rate of return regulation discourages the maximum development and implementation of the new technology required for America to be a successful competitor in the global information market.

Regulation of any industry or company is always a balancing act, but this is particularly true with rate base/rate of return regulation. Regulators must weigh such factors as reasonable rates, justified costs, satisfactory quality of service, and the financial health of regulated companies and finally arrive at decisions designed to promote the public interest. All of these tasks in a competitive environment, as the telecommunications industry is currently in, are monumental at best and inappropriate at worst.

Consistent with the industry's rapidly changing competitive environment, public policymakers must view their task of regulation differently, with less intrusion and with more flexibility than ever before.

CHANGES IN THE TELECOMMUNICATIONS ENVIRONMENT

Today's telecommunications environment is characterized by a new industry structure resulting from the AT&T divestiture, rapid technological developments, blurring market definitions, inevitable merging of communications and information (computer) technologies, and growing domestic and international competitive market pressures. In addition, there is a growing recognition that telecommunications can no longer be regarded as simply a domestic or local matter, but rather must be considered as an essential component of a global marketplace.

Existing rate of return regulatory systems no longer provide the incentives necessary to ensure that the United States fully invests in its public telecommunications network to meet the challenges of foreign competition. Nor do rate of return regulatory schemes provide the impetus to assure that the United States provides facilities for consumers to take advantage of the myriad of communications and information services that are now beginning to appear. The exclusive franchise characteristics of the telecommunications industry, which were fostered and encouraged in the past, have been displaced by decisions to encourage and accelerate domestic telecommunications competition and technological deployment.

The rate of investment and technology deployment in the telecommunications networks of large businesses are being driven by dynamic factors such as competition, rate of market development, and research and development advancements that lower costs and enhance capabilities. However, for the public telecommunications networks, certain regulatory mechanisms, such as rate of return regulation can reduce and delay the range of products and services available to the consuming public. This mechanism can also decrease the emergence of competition, and even potentially increase prices.

REEXAMINING THE CURRENT REGULATORY FRAMEWORK

In response to changes in technology and competitive market pressures, public policymakers and the telecommunications industry are re-examining the current framework of regulation and are seeking alternative, flexible forms of regulation that better suit today's telecommunications structure. At the same time, the competitive edge that can be afforded by an advanced, well functioning telecommunications infrastructure is being discussed with renewed vigor both within the United States and within other nations.

It is a given that any new system of regulation for the industry must retain one of the nation's most cherished telecommunications goals, that is, universal service. At the same time, any new regulatory schemes adopted by the nation and states must move the country

towards allowing and encouraging the public telecommunications companies to accelerate their investments in new technologies and systems. Only through this increased investment by the companies will the full range of telecommunications products and services be made available to American consumers and small businesses. This requires an enlightened regulatory framework with flexibility to adapt to the evolving conditions of the telecommunications environment.

Legislators, regulators, and consumers have joined the telephone companies in discussing alternative forms of regulation. Since divestiture, a flurry of legislative and commission initiatives and actions have taken place both within the states and at the federal level. Alternative forms of regulation, that have been investigated and implemented in various states, include flexible pricing, detariffing, service-by-service deregulation, shared earnings, price caps, rate stabilization, social contract, and deregulation (or market regulation).

Of the plans which have been adopted to date, most provide only short-term regulatory relief (e.g., experiments or trials) by either deregulating or detariffing individual telecommunications services, or empowering state commissions to authorize relaxed regulation over individual services. Telecommunications companies are given marketing, pricing, tariff filing, and earnings flexibility for competitive services and relief from burdensome costs associated with filing and litigating rate cases. Many of these regulatory reform initiatives recognize that authorized, interim steps are only part of a continuum toward moving away from rate of return regulation. While recognizing this need to move away from rate of return regulation, most of these initiatives, however, have been flawed by retaining an overall rate of return form of regulation upon the company providing public telecommunications services.

Although it is too early to completely evaluate the impact of these alternative regulations, several observations can be made.

- Universal service goals were maintained in the "experimental" states. The telephone companies of those states had net additions made to their public telecommunications networks.
- High quality telecommunications services were maintained.
- Regulatory lag was averted, with customers benefiting from the telephone company's ability to be more responsive through marketing and pricing flexibility on a more timely basis.
- Most importantly, the companies can be given the necessary market freedoms to effectively compete in highly competitive telecommunications services.

This freedom to compete encourages the industry with new incentives to invest in development of technology, deployment of new products and services, and creation of new jobs, while shareowners are being rewarded and new shareowners are being attracted by the telephone company's potential for possible greater earnings.

In today's telecommunications environment, regulatory protection of telephone customers has a more narrow function than in the past. For example, Centrex customers do not need regulatory protection because a viable, competitive option exists--PBXs. Likewise, other telecommunications services have become open to the superior "regulatory device" of free market forces and no longer require the "artificial" regulatory protections of a state or federal commission. It is from this realization that public policymakers are proceeding with alternatives of rate of return regulation.

Some regulators have come to recognize that under appropriate forms of regulation:

- telephone company customers still needing regulatory safeguards can be protected,
- any possible cross-subsidizations between regulated and non-regulated services can be deterred through existing accounting and structural safeguards.
- and high quality of service can be maintained.

At the same time, telephone companies can be encouraged to implement economic efficiencies (e.g., allocation of resources, productivity gains, utilization of facilities), to introduce and integrate new technologies, products and services, and to promote fair competition and economic development.

ECONOMIC AND SOCIAL BENEFITS

Historically, telecommunications has proven to be a powerful tool used to enhance and further the national economic and social well being. The ramifications for the future of an efficient public telecommunications infrastructure on the quality of life for Americans will be abundant (e.g., education, health care, social welfare, public and national security). Telecommunications services will offer opportunities in developing new industries and supporting existing industries and in creating new jobs. Industries, taking advantage of operating efficiencies inherent in a public telecommunications infrastructure, will become more competitive in domestic and world markets. Goods and service producing sectors will enjoy both direct and indirect benefits of decreasing costs, increasing efficiency, and improving service. The entire American public will benefit because universal communications and information services will be universally available and affordable. Geographic barriers will be removed, making it possible for communities, no matter where the location or density of population, to compete for new industry and for new jobs. The potentially divisive line between information "haves" and information "have-nots" will be eliminated through a public telecommunications network accessible on demand by all Americans.

Public policymakers must act now to realize the benefits of a viable telecommunications infrastructure. The extent to which state-of-the-art telecommunications capabilities are available in

different geographic areas is a function of many factors: available capital, management philosophy, and to a significant degree, national and state policies. Public policies must provide positive incentives, rather than disincentives, to private telecommunications companies to invest in the kind of modern capabilities that the states and the nation need if they are going to attract and retain businesses.

Telecommunications can be a win-win situation for all parties--Public and private enterprises; local, state, national, and global communities; residential and business consumers; rural and urban America; etc.

REGULATORY AND LEGAL RELIEF

While the telecommunications industry is operated in a competitive/regulated environment, foreign nations are moving forward with purposeful, aggressive programs that capitalize on their public switched networks as vital strategic resources. Increasingly, foreign countries are investing in Information Age technologies not only for domestic use, but also for export, chiefly to the United States, where the telecommunications industry is bound by constraints, restrictions, and incoherent national policies.

These regulatory and legal structures not only impact the telecommunications industry but ultimately impact the entire nation's ability to compete with foreign companies. The results are, then, detrimental to the United States' position as a global competitor, eroding its edge particularly in several key industries. These constraints ultimately end up hurting most the very public they are supposed to be serving.

As the communications and information industries continue to merge and as the geographic boundaries of domestic and global marketplaces continue to blur, the public telecommunications companies full participation is essential if the telecommunications infrastructure is to be the backbone for the United States as a "first rate", competitive economy. Reducing or eliminating unwarranted domestic and international regulatory and legal barriers to the ability of U.S. based companies to compete in telecommunications and information products, services, and equipment, must be a major public policy priority.

CHALLENGE TO PUBLIC POLICYMAKERS

Public policymakers should continue their commitment to providing universal service at reasonable rates. At the same time, policymakers should seek alternative regulatory and legislative mechanisms to ensure that the public telecommunications network fosters future economic and social development.

Appropriate regulatory changes, to give regulated telecommunications companies equal opportunity to provide competitive services in the marketplace, must be made by policymakers.

Policymakers should examine public policies and make necessary changes in laws, rules and regulations, to: (1) create incentives for regulated telecommunications companies to continue modernization programs; (2) encourage continued development and offering of the latest state-of-the-art in telecommunications equipment, products and services; and, (3) create a competitive environment to stimulate business development and prosperity for the general public.

The task at hand is not an easy one. However, creation of a new regulatory framework, building on the principles of the 1934 Communications Act which led to the development of the best telecommunications system in the World, will enable America's telecommunications companies to continue to prosper in a competitive marketplace.

Public policymakers at national and state levels, consumers and the telecommunications industry, should form an alliance to remove constraints adversely affecting the ability of the telecommunications industry to meet the changing needs of society.

The challenge of the partnership is to provide mutual support, exemplify a cooperative spirit and stimulate future technological development, resulting in America continuing to have the best telecommunications infrastructure in the World.

CREDENTIALS

State Factor is published by the American Legislative Exchange Council for educational purposes, only. This edition was written by Roop Mohunlall, Director of ALEC's Task Force on Telecommunications. The views expressed herein do not necessarily reflect the views of the American Legislative Exchange Council, its officers or members.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

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JUL 1 1994

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

**{TASK FORCE ON TELECOMMUNICATIONS}
{REGULATORY REFORM - MODEL BILL}**

TELECOMMUNICATIONS ACT
Model legislation.

{Title, enacting clause, etc.}

Section 1.{Title.}This Act shall be known as the Telecommunications Act.

Section 2.{Declaration of policy.}It is the policy of this state to:

- (A) Preserve the commitment to universal service. In most cases this should include a continued commitment to and reliance on federal and or state programs for the "truly needy", such as "Link up" and "Life line". In today's increasingly competitive environment all service providers must target subsidies to the truly needy in order to ensure universal access.
- (B) Rely on marketplace forces to determine the price, terms, availability, and conditions of competitive and discretionary services.
- (C) Where regulation is necessary, focus on price and quality of service, instead of on the provider. Regulators can assure customers of continued high quality service at affordable prices and the providers can benefit from their own efficiencies and successful marketing efforts.
- (D) Increase incentives to companies to provide the most efficient services and products and provide for options to move away from rate of return regulation. Providers will have an incentive to more effectively respond to customers' needs and the realities of the competitive marketplace and be encouraged to invest in the telecommunications infrastructure. This will offer opportunities for improvements in economic development, and in delivery of essential services such as education and health care.
- (E) Streamline the regulatory process for setting and adjusting basic local exchange and other regulated service rates. In an increasingly competitive environment, there must be an acceptable way, short of the lengthy hearings associated with general rate cases, to address the need for price changes.

***ALEC's Telecommunications Task Force supports the principles of this model bill, but recognizes that specific issues, including the definition of terms must be negotiated on a state-by-state basis. The purpose of this model is to highlight the major issues to be addressed and provide a framework for statutory changes. It is hoped that legislators who wish to change telecommunications regulatory statutes will develop bills that reflect the general policy declaration in Section 2.**

Section 3. {Definitions.} The following words and phrases when used in this Act shall have the meanings given to them in this Section:

(A) "Access service" means the provision of access to a local exchange network for the purpose of enabling a provider to originate or terminate telecommunications service within the exchange.

(B) "Basic local exchange service" means the provision of an access line and usage within a local calling area for the transmission of high-quality two-way switched voice communication.

(C) "Commission" means the appropriate regulatory body.

(D) "Contested case" or "case" means a proceeding as defined in state law.

(E) "Exchange" means one or more contiguous central offices and all associated facilities within a geographical area in which local exchange telecommunications services are offered by a provider.

(F) "Information services" or "enhanced services" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information that is conveyed by telecommunications. Information or enhanced services does not include the use of such capability for management, control, or operation of a telecommunications system or the management of a telecommunications service.

(G) "License" means a license issued pursuant to this Act, or other authority granted to a provider.

(H) "Line" or "access line" means the medium over which a telecommunications user connects to the local exchange.

(I) "Local calling area" means a geographic area encompassing one or more local communities as described in maps, tariffs, or rate schedules filed with and approved by the commission.

(J) "Local exchange rate" means the monthly rate, including all necessary and attendant charges, imposed for basic local exchange service to customers.

(K) "New telecommunication service" means a service not available on the effective date of this Act.

(L) "Person" means an individual, corporation, partnership, association, government entity, or any other legal entity.

(M) "Reasonable rate" or "Just and reasonable rate" means a rate that is not inadequate, excessive, or discriminatory as determined by the commission.

(N) "Residential customer" means a person to whom telecommunications services are furnished predominately for personal or domestic reasons.

(O) "Telecommunications provider" or "provider" means a person who for compensation provides telecommunications service.

(P) "Telecommunications services" includes regulated and unregulated services offered to customers for the transmission of two-way interactive communication and associated usage.

(Q) "Toll Service" means the transmission of two-way interactive switched communication between local calling areas. Toll service does not include individually negotiated contracts for similar telecommunication service or wide area telecommunications service.

(R) "Wide area telecommunications service" or "WATS" means the transmission of two-way interactive switched communication over a dedicated access line.

Section 4. {Definition of intent.}

Except as otherwise provided in this Act, this Act shall not be construed to prevent any person from providing telecommunications services in competition with another telecommunication provider.

Section 5. {The commission.}

(A) The commission shall have the jurisdiction and authority to administer this Act.

(B) In administering this Act, the commission shall be limited to the powers and duties prescribed by this Act.

(C) In addition to the other powers and duties prescribed by this Act, the commission shall have the authority to do the following:

(1) Establish by order the manner and form in which telecommunications providers of regulated services within the state keep accounts, books of accounts, records, and memoranda. The commission requirements under this subdivision shall not be in conflict with or in addition to any federal regulations covering the same subject.

(2) Require by order that a provider of a regulated service, including access, make available for public inspection and file with the commission a schedule of the provider's rates, services, and condition of service.

(3) Establish by order the standards for quality of service for each regulated telecommunication service offered in this state.

(4) Assure the availability of high quality basic local exchange services.

(5) Issue a yearly report to the legislature and governor.
{Specify Information Required}

(D) With respect to contested cases the commission shall:

(1) Upon receipt of an application or complaint filed pursuant to a provision of this Act, or on its own motion, the commission may conduct an investigation, hold hearings, and issue its findings and order in accordance with approved state administrative regulations.

(2) The commission shall require uniform filing standards for a case commenced under this Section. An application filed under this Act shall contain all information, testimony, exhibits, or other documents and information. The burden of proving a case under this Act shall be with the party filing the application or complaint.

(3) The commission shall have the power to administer oaths, certify to all official acts, and to compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony.

(4) The commission shall issue a final order in a case filed under this Act within 90 days from the date the application or complaint is filed. If a hearing is held, the commission shall have an additional 30 days to issue its final order.

(5) An order of the commission shall be subject to review as provided by state law.

(6) Before commencing a hearing under this Section, the commission shall attempt alternative means of resolving a dispute under its jurisdiction.

(E) If two or more telecommunication providers are unable to agree on a matter relating to a regulated telecommunication service between the parties, then either provider may file with the commission an application for resolution of the matter.

(F) Complaints on service.

(1) The commission may investigate and resolve complaints that concern the quality and availability, conditions, or disconnection of a regulated service, or any other provision of this Act that regulates service.

(2) If the commission finds, after notice and hearing, that the quality, general availability, or conditions for regulated service violate this Act or an order of the commission under this Act, or is adverse to the public interest, the commission may require changes in how the telecommunication services are provided. The commission's authority includes, but is not limited to, the revocation of a license and issuing cease and desist orders.

(G) Upon complaint and after a review pursuant to Section 5(D), if the commission finds that a new telecommunication service as being offered is adverse to the public health, safety, or general welfare or to the quality of basic local exchange service, the commission may order changes in the terms and conditions under which the service is offered.

(H) Upon application by a service provider, the commission shall deregulate a service of that provider if the commission determinnes that competition among providers of that service is sufficient to protect the public interest.

(I) If the commission finds that a party's position in a proceeding under this Act was frivolous, the commission shall award to the prevailing party the costs, including reasonable attorney fees, against the non-prevailing party and their attorney.

(1) As used in this Section: "Frivolous" means that at least one of the following conditions is met:

(a) The party's primary purpose in initiating the proceeding or asserting the defense was to harass, embarrass, or injure the prevailing party.

(b) The initiating party had no reasonable basis to believe that the facts underlying its legal position were true.

(c) The initiating party's legal position was devoid of arguable legal merit.

(2) "Prevailing party" means a party who wins the proceedings.

(J) Disclosure.

(1) Trade secrets and commercial commercial or financial information submitted pursuant to the provisions of this Act are exempt from disclosure under the Freedom of Information Act.

(2) A protective order entered in a contested case proceeding shall exempt disclosure of information identified in 5 I(1) during the pendency of a contested case proceeding.

(3) Nothing in this Section affects the commission's authority to issued protective orders or precludes a party to a proceeding before the commission from obtaining discovery of information pursuant to law or procedure applicable to such proceedings.

(K) Pre-existing clause.

(1) Except as otherwise provided by Section 5(K) (2) or by this Act, all complaints pending before the commission on the effective date of this Act, and all investigations, examinations, and proceedings undertaken, commenced, or instituted by the commission before the effective date of this Act, may be heard, conducted, and continued to final determination, and all pending actions or proceedings brought by or against the commission may be prosecuted or defended in the same manner.

(2) The commission shall order the dismissal of all complaints, investigations, examinations, and proceedings undertaken, commenced, or instituted before this Act takes effect that are in conflict, prohibited, or otherwise inconsistent with the provisions of this Act.

(L) The commission may promulgate rules or issue orders for the implementation and administration of this Act.

Section 6. {Basic local exchange services.}

(A) Licensure.

(1) A telecommunication provider not possessing a license on the effective date of this Act shall not provide basic local exchange service in this state until it has obtained a license from the commission pursuant to this Act.

(2) Except as provided in Section 6(A) (3), a license granted to a telecommunication provider of basic local exchange service before the effective date of this Act shall remain in full force and effect, and carriers need not apply for a new license in order to continue offering or providing service to the extent authorized in the license or this Act.

(3) The commission shall review, modify, and establish the terms of any license issued to a telecommunication provider of basic local exchange service before the effective date of this Act in order to ensure its conformity with the requirements of this Act.

(4) Pending the determination of an application for a license, the commission without notice and hearing may issue a temporary license for a period not to exceed one year in cases of emergency to assure maintenance of adequate service or to serve particular customers and may exempt from the requirements of this Act temporary services or operations when the exemption would be in the public interest.

(B) When granting a license:

(1) After notice and hearing, the commission shall approve an application for a license if the commission finds both of the following:

(a) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide basic local exchange service to every person within the geographical area of the license.

(b) The granting of a license to the applicant would not be contrary to the public interest.

(2) The commission shall retain a copy of all granted licenses and make all information contained in the license available to the public.

(3) Each provider granted a license shall retain a copy of the license at its principal place of business and make the license available for review to the public.

(C) Before substantially altering the nature or scope of the basic local exchange services authorized under a license, the provider of basic local exchange services shall apply to the commission for approval before making any alterations or additions pursuant to this Act.

(D) Pursuant to the provisions of this Section, the commission shall approve for each provider any alterations to the local exchange rates.

(1) A provider of basic local exchange service shall set the initial rates to be charged under this Act on or before the effective date of this Act, and file them with the commission.

(2) The rates for basic local exchange service shall be just and reasonable as determined by the commission.

(3) A provider may alter its rates for basic local exchange service upon notice to the commission. The notice to the commission of a rate alteration shall be accompanied with sufficient documentary support that the rate alteration is just and reasonable. After consulting with providers, the commission shall establish either by rule or order any documentation that may be required under this subsection. Notice to customers is required and shall be published in a newspaper of general circulation in the service area to be affected within a reasonable time period after the notice of the rate alteration is provided to the commission, and shall be included in or on the bill of each affected customer of the provider in the next billing. The notice shall contain all of the following information:

(a) An estimate of the amount of the annual change for the typical residential customer that would result if the rate alteration is approved by the commission.

(b) A statement that a customer who desires to comment on the rate alteration or who desires the complete details of the rate alteration may call or write the commission.

(c) Either by a complaint filed by an affected party or on the commission's own motion at any time prior to the rate alteration taking effect, the commission may require a filing as provided in Section 5(D) to review a rate set pursuant to Section 6(D) (3) and after the review issue an order approving, modifying, or rejecting the rate alteration including, but not limited to, a refund of collected excessive rates, including interest on the rates.

(d) The commission shall hold a public hearing, if necessary, within 45 days from the date of the notice and issue an order within the 120-day period following the date the application or complaint is filed, finding one of the following:

(i) That the rate alteration is just and reasonable.

(ii) That a filing under Section 5(D) should be commenced pursuant to Section 6(D) (3) (c).

(iii) That there is a likelihood that the proposed rate alteration is not just and reasonable and order a stay of the rate alteration pending a review of the rate under this Section.

(E) A telecommunication provider of basic local exchange service is not required to, but may provide toll services. If a telecommunication provider that provides basic local exchange service does not offer toll or connect with a toll provider, the commission may order a toll provider to interconnect with the telecommunication provider upon terms that are fair to both providers.

(F) If it is the public policy of the state to subsidize low income customers, then:

(1) The commission shall require each provider of residential basic local exchange service to offer certain low income customers the availability of basic local exchange service at a rate below the regulated rate.

(2) The commission shall establish a rate for each subscriber line of a provider to allow the provider to recover costs incurred under this Section.

(3) The commission by order shall determine which customers qualify for the special rate under this Section.

Section 7. {Obligation of service providers.} Providers of telecommunications service shall not do any of the following:

(A) Discriminate against another provider by refusing or delaying access to the local exchange.

(B) Refuse or delay interconnections or provide inferior connections to another provider.

(C) Degrade the quality of access provided to another provider.

(D) Impair the speed, quality, or efficiency of lines used by another provider.

(E) Develop new services to take advantage of planned but not publicly known changes in the underlying network.

(F) Refuse or delay a request of another provider for information regarding the technical design and features, geographic coverage, and traffic capabilities of the local exchange network.

(G) Refuse or delay access or be unreasonable in connecting another provider to the local exchange whose product or service requires novel or specialized access requirements.

(H) Upon a request, fail to fully disclose in a timely manner all available information necessary for the design of equipment that will meet the specifications of the local exchange network.

(I) Refuse or delay access by any person to another provider.

(J) Sell, lease, or otherwise transfer an asset to an affiliate of the provider for an amount less than the fair market value of the asset.

(K) Buy, lease, or otherwise acquire an asset from an affiliate of the provider for an amount greater than the fair market value of the asset.

(L) Bundle unwanted services or products for sale or lease to another provider.

(M) Except with the approval of the commission, jointly market or offer as a package, at a discounted rate, one or more unregulated services with a regulated service.

(N) Sell service or products, extend credit, or offer other terms and conditions on more favorable terms to an affiliate of the provider or to its retail department that sells end users than the provider offers to other providers.

(O) Refuse, charge, delay, or impair the speed of the connecting of a person to a telecommunication emergency service.

Section 8. {Access service.}

Each state needs to address its own situation and policy needs as they relate to access service.

Section 9. {Toll service.}

(A) Except as provided by this Section, the commission shall not review or set rates for toll service.

(B) The commission shall require that toll service is universally available on a nondiscriminatory basis to all persons in the state.

Section 10. {Discontinuance of service.}

(A) A telecommunication provider that provides either basic local exchange or toll service, or both, may discontinue either service to an exchange if one or more other telecommunication providers are furnishing substantially the same telecommunication service to the customers in the exchange.

(B) A telecommunication provider proposing to discontinue a regulated service to an exchange shall file a notice of discontinuance of service with the commission, publish the notice in a newspaper of general circulation within the exchange, and provide other reasonable notice as required by the commission.

(C) Within 30 days after the date of publication of the notice, a person or other telecommunication provider may apply to the commission to determine if the discontinuance of service is authorized pursuant to this Act.

(D) A provider of a regulated service shall not discontinue the regulated service for failure by a customer to pay a rate or charge imposed for an unregulated service. For the purposes of this section, the commission may determine how payments are allocated between regulated and unregulated services.

(E) The commission shall determine when and under what conditions a provider of basic local exchange service may discontinue service under this Section.

Section 11.{Sunset clause.} This Act sunsets ____ years from the effective date of the Act.

Section 12.{Severability clause.}

Section 13.{Repealer clause.}

Section 14.{Effective date.}